

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8429

Investigation to consider revising maximum and)
minimum water levels at Great Averill Pond,)
Little Averill Pond, and Norton Lake in the)
towns of Averill and Norton and Warren's Gore,)
Vermont)

Order entered: 8/28/2015

THIRD PROCEDURAL ORDER

I. INTRODUCTION

On March 6, 2015, the Vermont Public Service Board ("Board") opened an investigation¹ to consider revising maximum and minimum water levels at Great Averill Pond, Little Averill Pond, and Norton Lake in the towns of Averill and Norton and Warren's Gore, Vermont. On June 17, 2015, I issued a scheduling Order for this proceeding including a deadline for motions to intervene. Subsequently, Patrick J. Calecas filed a motion to intervene on behalf of the Averill Lakes Association (the "Association"), and Thomas W. Dunn filed a motion to intervene on behalf of the Averill Corporation (the "Corporation"). In this Order, I grant those intervention motions as described herein. On August 21, 2015, Coaticook River Water Power Company ("Coaticook") proposed a revision to the schedule for this proceeding. In this Order, I also direct that any comments on Coaticook's request be filed no later than September 11, 2015.

1. The Order was issued in response to a petition filed by Ms. Barbara Nolan ("Ms. Nolan") of Averill, Vermont (the "Petition").

II. PROCEDURAL HISTORY

On March 10, 2015, a prehearing conference was held in this Docket. At the prehearing conference, the Hearing Officer² requested that the Vermont Agency of Natural Resources ("ANR") work with the Vermont Department of Public Service ("Department") and Coaticook to mutually develop a proposed schedule by March 31, 2015.

On March 13, 2015, Susan and Lawrence Bruce (the "Bruces") filed a motion to intervene and a notice of appearance as *pro se* landowners.

On May 5, 2015, the First Procedural Order in this Docket was issued.³

On June 17, 2015, in the Second Procedural Order, I granted the Bruces permissive intervention as *pro se* landowners and established a schedule.

On July 16, 2015, I held a public hearing at the Norton Town Hall.

On July 22, 2015, Patrick J. Calecas filed a motion to intervene on behalf of the Association (the "Association Motion").

On July 29, 2015, Thomas W. Dunn filed a motion to intervene on behalf of the Corporation (the "Corporation Motion").

On July 31, 2015, Coaticook filed comments in response to the Association Motion and the Corporation Motion (the "Coaticook Comments"). Coaticook did not object to the intervention of either the Association or the Corporation but did request that the Board restrict their participation to issues related to impacts to their "property and recreational issues."⁴

On August 21, 2015, Coaticook filed a Motion to Amend Schedule (the "Coaticook Motion") and a proposed revised schedule for this proceeding.

No other comments on the intervention motions were received.

2. I am the second Hearing Officer assigned to this case. The first Hearing Officer was Andrew Flagg. Mr. Flagg has left the Board, and the Docket was reassigned to me.

3. In the First Procedural Order, the parties were instructed to file a proposed schedule in this Docket by May 29, 2015. Further, Coaticook was directed to file a letter regarding its legal representative as well as a notice of appearance, if appropriate. These filings were made in a timely fashion.

4. Coaticook Comments at 2.

III. MOTIONS TO INTERVENE

A. The Standard

PSB Rule 2.209 governs intervention in proceedings before the Board.⁵

Rule 2.209(B) reserves to the Board the power to grant intervenor status on a permissive basis, when an applicant "demonstrates a substantial interest which may be affected by the outcome of the proceeding." In exercising the discretionary authority reserved in Rule 2.209(B), the Board considers three factors:

- (1) whether the applicant's interest will be adequately protected by other parties;
- (2) whether alternative means exist by which the applicant's interest can be protected; and
- (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.⁶

Rule 2.209(C) further provides that the Board may impose certain restrictions on an intervenor in participating in the proceeding. Specifically, the Board may

restrict such party's participation to only those issues in which the party has demonstrated an interest, may require such party to join with other parties with respect to appearance by counsel, presentation of evidence or other matters, or may otherwise limit such party's participation, all as the interests of justice and economy of adjudication require.

B. Application of the Standard

The Association Motion states that Patrick J. Calesas has been authorized as the Secretary for the Association to serve as its *pro se* representative before the Board based on its bylaws and an unanimous vote of its membership. In the absence of any objection, I find that the Association has set forth a substantial interest that may be affected by the outcome of the proceeding that is sufficient for permissive intervention under Rule 2.209(B). The Association's participation is restricted to only those issues in which it has demonstrated an interest. In its

5. See *Petition of Vermont Gas Authorizing the "Addison Natural Gas Pipeline" Project*, Docket 7970, Order of 9/25/14 at 2-3.

6. See *Petition of Vermont Department of Public Service seeking an Investigation of Telephone Operating Company of Vermont LLC, d/b/a Fairpoint Communications*, Docket 8390, Order of 1/23/15, at 3.

motion, the Association requested to participate and demonstrated an interest in "the recreational uses and environmental conditions of the bodies of water."⁷

The Corporation Motion states that Thomas W. Dunn is the Corporation's Vice President and, as such, is authorized to serve as its *pro se* representative before the Board. In the absence of any objection, I find that the Corporation has set forth a substantial interest that may be affected by the outcome of the proceeding that is sufficient for permissive intervention under Rule 2.209(B). The Corporation's participation is restricted to only those issues in which it has demonstrated an interest. In its motion, the Corporation requested to participate and demonstrated an interest in impacts on the Corporation's activities "associated with the current water flows and levels in the Coaticook Water Basin."⁸

I note that the Association and the Corporation are representing themselves *pro se*. They are reminded that, although the Board makes efforts to enable participation by non-attorneys, parties appearing without counsel are still required to adhere to all of the Board's Rules of Practice,⁹ as well as all orders issued in this proceeding, including scheduling orders. This includes, among other requirements, that all filed documents be in the proper form and that they be served on all other parties to the proceeding.

IV. COMMENTS ON THE COATICOOK MOTION

The Coaticook Motion requests that the existing schedule for this proceeding be modified starting June 24, 2016, so that Coaticook may be more responsive to the recommendations of all the parties to this proceeding. Any comments on the Coaticook Motion shall be filed no later than September 18, 2015.

So ORDERED.

7. The Association Motion at 1.

8. The Corporation Motion at 1.

9. *See, e.g.*, Board Rule 2.000.

Dated at Montpelier, Vermont, this 28th day of August, 2015.

s/Michael E. Tousley
Michael E. Tousley, Esq.
Hearing Officer

OFFICE OF THE CLERK

FILED: August 28, 2015

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@vermont.gov)